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No. 04-723

In the Supreme Court of the United States

STEVEDORING SERVICES OF AMERICA AND HOMEPORT INSURANCE CO., PETITIONERS

v.

AREL PRICE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

1. Whether claimant's average annual earnings, for purposes of determining his compensation rate under the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, should be computed under 33 U.S.C. 910(a), rather than under 33 U.S.C. 910(c), where the claimant worked more than 75% of the workdays available for a five-day worker, the employment in which he worked was not seasonal, and there is no practical difficulty in applying Section 910(a).

2. Whether the total amount of LHWCA compensation benefits payable to respondent, who is entitled to a permanent partial disability compensation award for one injury and to a permanent total disability compensation award for a second distinct injury, is limited to the amount specified in 33 U.S.C. 908(a) for a permanent total disability.

3. Whether 33 U.S.C. 906(b)(1), which provides that compensation for disability shall not exceed 200% of the national average weekly wage, applies separately to each of claimant's concurrent compensation awards, or instead applies to the awards in the aggregate.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-27) is reported at 382 F.3d 878. The decision and order of the Benefits Review Board (Pet. App. 28-48) is reported at 36 Ben. Rev. Bd. Serv. (MB) 56. The decision and order of the administrative law judge is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 11, 2004. A petition for rehearing was denied on August 27, 2004 (Pet. App. 5). The petition for a writ of certiorari was filed on November 24, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. 901 *et seq.*, requires covered employers to provide compensation for disability or death resulting from the work-related injury of covered employees. 33 U.S.C. 904, 908. The Act defines disability as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. 902(10).

For certain "scheduled" injuries resulting in permanent partial disability, incapacity to earn wages is conclusively presumed, and the claimant is entitled to compensation at a rate of 66 2/3% of the claimant's average weekly wages for a fixed number of weeks. 33 U.S.C. 908(c)(1)-(19). For "all other cases" of injuries involving permanent partial disability, the compensation rate is "66 2/3 per centum of the difference between the average weekly wages of the employee and the employee's wage-earning capacity thereafter." 33 U.S.C. 908(c)(21). In cases of permanent total disability, the compensation rate is "66 2/3 per centum of the [employee's] average weekly wages." 33 U.S.C. 908(a).

Under the LHWCA, "the average weekly wage of the injured employee at the time of injury" is "the basis upon which to compute compensation," 33 U.S.C. 910, and an employee's average weekly wage is "one fifty-second part of his average annual earnings." 33 U.S.C. 910(d)(1). There are three alternative methods for determining an employee's average annual earnings. First, if the injured employee has worked in the same employment in which he suffered his injury "during substantially the whole of the year immediately

preceding [the] injury," his average annual earnings are determined by ascertaining his average daily wage during that period and multiplying it by 300, in the case of a six-day worker, or 260, in the case of a five-day worker. 33 U.S.C. 910(a). Second, if the injured employee has not worked in such employment during substantially the whole of the year, the same calculation should be employed using the average daily wage of an employee of the same class engaged during the same period in the same or similar employment. 33 U.S.C. 910(b). Finally, if either of those methods "cannot reasonably and fairly be applied," an employee's average weekly earnings is the sum that "reasonably represent[s] the annual earning capacity of the injured employee," taking into account his previous earnings in the employment in which he was working when injured or in other employment, and the earnings of other employees in similar employment. 33 U.S.C. 910(c).

The Act also provides a cap on the amount of compensation that an employee may receive for a disability. "Compensation for disability * * * shall not exceed an amount equal to 200 per centum of the applicable national average weekly wage," as determined by the Secretary of Labor on an annual basis. 33 U.S.C. 906(b)(1) and (3).

2. Respondent Arel Price suffered a back injury in 1979 while employed by petitioner Stevedoring Services of America (SSA). Pet. App. 6. Price received a permanent partial disability award in the amount of $196.01 per week. *Ibid.* That award compensated him for a reduction in his wage-earning capacity from $627.88, his average weekly wage at the time of that injury, to $333.87, his residual weekly wage-earning capacity when, after back surgery, he returned to work

and was restricted to lighter duty jobs. *Id.* at 6 & n.2 ($196.01 award equals 66 2/3% x ($627.88-$333.87)). In 1991, Price suffered another work-related back injury that required him to undergo additional surgery. *Id.* at 6. He returned to work in 1992, but his back pain gradually worsened, resulting in his retirement, on his physician's advice, in 1998. *Id.* at 6, 30.

Price then filed claims under the LHWCA seeking, *inter alia*, compensation for permanent total disability for the aggravation of his back condition that culminated in his 1998 retirement. Pet. App. 7. The administrative law judge (ALJ) granted Price benefits for his permanent total disability at the time of his 1998 retirement, payable by petitioner Homeport Insurance Co., SSA's LHWCA insurance carrier at the time of this injury. *Ibid.* The ALJ concluded that Price's average annual earnings should be computed under 33 U.S.C. 910(a), because he worked 75% of the workdays available for a five-day worker and because his work was stable and continuous. *Price* v. *Stevedoring Serv. of Am.*, Nos. 1992-LHC-2469 & 1999-LHC-1653 (Oct. 13, 2000), slip op. 29 (ALJ Decision). The ALJ then determined that Price's average weekly wage was $1156.15 and that compensation benefits should therefore be awarded at two-thirds of that amount. *Id.* at 31.

The ALJ also concluded that because Price's wage-earning capacity at the time of his 1998 injury was less than his wage-earning capacity in 1979 when he was first injured, he should continue to receive permanent partial disability benefits for his 1979 injury. ALJ Decision at 32. The ALJ further ruled, however, that Homeport was entitled to a credit for the amount of compensation being paid by SAIF Corporation for the 1979 injury, to the extent the combined amounts of the two awards would

otherwise exceed the amount allowed by 33 U.S.C. 908(a) for total disability. ALJ Decision at 32, 34. The ALJ also held that if the combined total of Price's permanent partial disability award and of his total disability award exceeded the statutory maximum specified in 33 U.S.C. 906(b)(1), the benefits payable by petitioner Homeport should be adjusted so that the combined benefits do not exceed that maximum. ALJ Decision at 32.

3. The Benefits Review Board modified the award in part, and otherwise affirmed. Pet. App. 28-48. The Board affirmed the ALJ's determination that Price's average weekly wage should be computed under Section 910(a), rather than Section 910(c), because Price worked more than 75% of the available work days during the year preceding his 1998 injury and because his work was stable and continuous. *Id.* at 42-44. The Board also concluded, however, that the ALJ had not calculated Price's compensation correctly, because claimant's average weekly wage was $1525.90, rather than $1156.15. *Id.* at 44-45. The Board therefore modified the ALJ's award in that respect.

The Board affirmed the ALJ's ruling that petitioner Homeport's weekly liability for total disability compensation should be reduced by the amount of weekly permanent partial disability benefits being paid by SAIF. Pet. App. 46. The Board also affirmed the ALJ's holding that the combined amounts of the concurrent awards may not exceed the statutory maximum specified in Section 906(b)(1). *Id.* at 47 n.12.

4. The court of appeals affirmed in part and reversed in part. Pet. App. 1-27. The court first held that Section 910(a), rather than Section 910(c), is the proper basis for computing Price's average weekly

wage. The court noted that Section 910(c) applies only when Section 910(a) or 910(b) cannot be reasonably and fairly applied, and that this exception comes into play when employment in the industry is casual, irregular, seasonal, intermittent, and discontinuous; when applying Section 910(a) or 910(b) would result in excessive compensation in light of claimant's actual employment record; or when there is insufficient evidence in the record to enable the ALJ to make an accurate calculation under Section 910(a) or 910(b). *Id.* at 10; see *id.* at 12 (stating that, notwithstanding Price's satisfaction of the 75% rule, "[w]hen there are fixed, determinable periods of inactivity during the year, Section 910(a) or (b) cannot reasonably and fairly be applied").

The court concluded that because Price worked more than 75% of the days available for a five-day worker, application of the Section 910(a) formula would not excessively compensate him. Pet. App. 11. The court further concluded that the ALJ's finding that Price's employment was not intermittent and casual was supported by substantial evidence. *Id.* at 11-12. The court explained that employment in an industry is deemed casual, intermittent, or seasonal when there are fixed, determinable periods of inactivity during the year. *Ibid.* While Price did not obtain work the same number of days every week, there were no fixed periods of inactivity. *Ibid.*

The court of appeals also held that the Board and ALJ had erred in reducing petitioners' liability for permanent total disability compensation by the amount of Price's permanent partial disability award. Pet. App. 13-20. The court noted that concurrent awards that compensate a claimant for the respective reduction in the claimant's wage-earning capacity caused by each

successive injury do not constitute "double dipping" in contravention of Section 908(a). The court explained that double dipping occurs only when an award compensates an employee for a loss of wage-earning capacity that is already accounted for in an earlier award. *Id.* at 13-16. Because the ALJ found that Price's wage-earning capacity had not increased between his 1979 and 1998 injuries, the court concluded that the first award compensates Price for the initial diminution in earning capacity, while the second award compensates him for elimination of his residual earning capacity. *Id.* at 18. The court therefore held that "permitting Price to retain the full amount of both awards would not double-compensate him for any loss in wage-earning capacity." *Id.* at 20.

Contrary to the conclusions of the Board and the ALJ, the court of appeals also held that Section 906(b)(1) sets a maximum amount of compensation for each of the concurrent awards individually, not for the total amount of both awards combined. Pet. App. 20-21. The court reasoned that because the phrase "compensation for disability" as used elsewhere in the LHWCA refers to an award for each different type of disability, the same phrase in Section 906(b)(1) refers to the maximum weekly compensation allowed from an award for a particular disability, not from all awards to a claimant. *Id.* at 23.

ARGUMENT

1. Petitioners contend (Pet. 9) that the court of appeals erred in adopting a rule that requires the application of Section 910(a) and forbids the application of Section 910(c) when an employee has worked at least 75% of the workdays available for a five-day worker.

Petitioner argues (Pet. 14) that such a rule conflicts with the statutory directive that Section 910(c), rather than Section 910(a), should be used when Section 910(a) cannot "reasonably and fairly be applied." 33 U.S.C. 910(c). That contention does not warrant review.

a. Initially, petitioner's contention reflects a misreading of the court of appeals' decision. The court of appeals did not hold that Section 910(a) should be applied in all cases in which an employee has worked at least 75% of the available workdays. The court expressly recognized that it would be unfair and unreasonable to apply Section 910(a) to such an employee if that employee's work is seasonal or intermittent, or if there is insufficient evidence in the record to enable the ALJ to make an accurate calculation under Section 910(a). Pet. App. 10.

Here, based on the ALJ's findings, the court of appeals concluded that Price's employment was not seasonal or intermittent, Pet. App. 11-12, and petitioners suggest no basis for overturning that fact-bound conclusion. Nor do petitioners argue that there was insufficient evidence in the record to enable the ALJ to make an accurate calculation under Section 910(a).

Petitioners principally object to the court of appeals' approach on the ground that it leads to overcompensation in certain cases. Pet. 10. But the possibility of overcompensation is inherent in Section 910(a). A calculation under Section 910(a) results in a "theoretical approximation of what a claimant could ideally have been expected to earn" if the claimant had worked "every available work day in the year." *Ingalls Shipbuilding, Inc.* v. *Wooley*, 204 F.3d 616, 618 (5th Cir. 2000) (citation omitted). Yet Congress surely understood that because of a variety of factors, such as illness

and vacations, few claimants have worked every available workday in a year. Moreover, Congress expressly made Section 910(a) applicable not only when the claimant has worked the entire year preceding the injury, but also when the claimant has worked "substantially the whole of the year." 33 U.S.C. 910(a). Congress's retention of the Section 910(a) standard therefore necessarily reflects Congress's judgment that the administrative convenience of applying Section 910(a) justifies some degree of overcompensation. Accordingly, while Section 910(a) may produce some level of overcompensation, that fact alone is not a sufficient basis for concluding that it cannot "reasonably and fairly be applied." 33 U.S.C. 910(c). As the Fifth Circuit recently explained, "[o]ver-compensation alone does not usually justify applying § 910(c) when § 910(a) or (b) may be applied," because overcompensation "is built into the system institutionally." *Gulf Best Electric, Inc.* v. *Methe*, 396 F.3d 601, 606 n.1 (2004) (citation omitted).

Indeed, while applying Section 910(a) can lead to some degree of overcompensation, resorting to Section 910(c) creates problems of its own. Section 910(c) invites uncertain inquiries into a worker's annual earning capacity. It is no easy matter to determine what "reasonably represent[s] the annual earning capacity of the injured employee," taking into account his previous earnings in the employment in which he was working when injured or in other employment, and the earnings of other employees in similar employment. 33 U.S.C. 910(c). That does not suggest that there should be an invariable preference for calculating compensation under Section 910(a) rather than Section 910(c). But it reinforces the conclusion that the possibility that Sec-

tion 910(a) will result in some overcompensation is not a sufficient basis for invoking Section 910(c).

To the extent that petitioners are arguing that the LHWCA does not permit any percentage figure to be considered in determining when Section 910(a) should be preferred over Section 910(c), that contention is without merit. In order to determine whether it is unreasonable and unfair to apply Section 910(a), see 33 U.S.C. 910(c), it makes sense to give some consideration to the percentage of the available days that a claimant has worked. Cf. *Chandris, Inc.* v. *Latsis*, 515 U.S. 347, 371 (1995) (concluding, as an appropriate rule of thumb for the ordinary case, that a worker who spends less than about 30% of his time in the service of a vessel in navigation should not qualify as a seaman under the Jones Act (Merchant Marines Act of 1920, ch. 250, 41 Stat. 988)). To the extent that petitioners are arguing that the 75% figure is too low, petitioners have not explained why that is necessarily so. For example, petitioners have not shown that the 75% figure so far departs from the customary hours worked in the industry that it produces more overcompensation than Congress could have intended.

b. In any event, review of the first question presented is unwarranted because no other circuit has yet taken a position on whether the court of appeals' approach in this case best implements the LHWCA. The question of what approach best implements Congress's scheme would benefit from further ventilation in the circuits.

Petitioners err in contending (Pet. 10) that the decision below conflicts with decisions of the D.C. Circuit and the Seventh Circuit. Although those Circuits have not adopted a rule like that of the Ninth

Circuit, neither have they rejected such a rule, and their rulings are consistent with the Ninth Circuit's decision.

In *Johnson* v. *Britton*, 290 F.2d 355 (D.C. Cir.), cert. denied, 368 U.S. 859 (1961), the claimant worked only 69% of the workdays during the year before his injury, and thus he falls outside of the Ninth Circuit's "75% rule." *Id.* at 356-357 (claimant was employed on a 5-day week basis and worked 180 days during the year preceding his injury). *Johnson*'s conclusion that Section 910(c), rather than Section 910(a), governed determination of the claimant's average annual earnings in that case is therefore consistent with the decision below.

The Seventh Circuit's decision in *Strand* v. *Hansen Seaway Service, Ltd.*, 614 F.2d 572 (1980), also does not conflict with the Ninth Circuit's ruling in this case. The claimant in *Strand* appears to have worked 84% of the workdays in the year preceding his injury (252 out of 300, see *Matulic* v. *Director, OWCP*, 154 F.3d 1052, 1058 n.4 (9th Cir. 1998)), but the Seventh Circuit did not apply Section 910(a) because the port where he worked was open only 36 weeks a year and thus his employment was "seasonal." *Strand*, 614 F.2d at 573, 575. That ruling is consistent with that of the court below, which stated that the seasonal nature of employment would be an independent reason for departing from Section 910(a) and employing Section 910(c). Pet. App. 10; see *id.* at 11-12 (distinguishing *Strand* as case in which there were fixed determinable periods of inactivity in the employer's operation).

Based on the decision in *New Thoughts Finishing Co.* v. *Chilton*, 118 F.3d 1028 (5th Cir. 1997), petitioners predict (Pet. 11) that "[t]he Fifth Circuit is unlikely to follow the '75 percent rule.'" In that case, however, the "parties and the ALJ agree[d] that the computation of

[claimant's] average annual earnings is governed by Section [9]10(c)" and thus the court did not address the factors governing when Section 910(c) applies instead of Section 910(a). 118 F.3d at 1030.

c. Petitioners also err in contending (Pet. 12-14) that the decision below is inconsistent with this Court's decision in *Metropolitan Stevedore Co.* v. *Rambo*, 521 U.S. 121 (1997). *Rambo* did not address the calculation of a claimant's pre-injury average weekly wage under 33 U.S.C. 910(a)-(d). Rather, it held that, under 33 U.S.C. 908(h), a nominal compensation award may be appropriate when there is a significant possibility that the worker's wage-earning capacity, although presently unaffected, may fall below the level of his pre-injury wages sometime in the future. 521 U.S. at 137-138.

Petitioners rely on *Rambo*'s observation (521 U.S. at 133) that its interpretation of Section 908(h) promotes accuracy over finality. See Pet. 13. But this case does not involve the question of how Section 908 strikes the balance between accuracy and finality. Instead, it involves the question of how Section 910 strikes the balance between accuracy and administrative efficiency. As already discussed, the very existence of Section 910(a) reflects Congress's judgment that administrative efficiency justifies some degree of inaccuracy. And because Section 910(c) is more difficult to apply, it does not invariably lead to greater accuracy.

2. Petitioners next contend (Pet. 19-23) that the court of appeals erred in holding that Price's permanent total disability award should not be reduced by the amount of his concurrent permanent partial disability award. That contention is without merit and does not warrant review.

a. Price received a compensation award for the permanent partial disability caused by his 1979 injury and the corresponding diminution in his wage earning capacity. Nearly 20 years later, Price became totally disabled, depriving him of his residual wage earning capacity. The court of appeals correctly recognized that unless Price receives full concurrent compensation awards for each distinct loss of wage-earning capacity, his total loss of wage-earning capacity will not be fully compensated. Pet. App. 15; see *Hastings* v. *Earth Satellite Corp.*, 628 F.2d 85, 91 (D.C. Cir. 1980) ("Because compensation for [claimant's] original loss of earning capacity was already addressed in the permanent-partial award, logic and fairness require that the permanent-partial disability award continue concurrently with the permanent-total award.").

Price's receipt of both awards does not constitute "double-dipping" in violation of 33 U.S.C. 908. As the court of appeals explained, concurrent awards would overcompensate a claimant if they do not each remedy a distinct loss of wage-earning capacity. Pet. App. 13. The court noted that this could occur if the claimant's wage-earning capacity increased after his partial disability award had been fixed, so that his total disability award would be based, in part, on a loss of wage-earning capacity that was already accounted for in the partial disability award. Based on the ALJ's unchallenged finding, however, the court concluded that although Price's wages increased following his return to work, that increase did not reflect an increase in wage-earning capacity. *Id.* at 20; see *Metropolitan Stevedoring Co.* v. *Rambo*, 515 U.S. 291, 301 (1995) (noting that wage increase due to inflation would not reflect an increase in wage-earning capacity). Thus, each of the concurrent

awards compensates for a distinct loss of wage-earning capacity, adding up to his entire wage- earning capacity, and no overcompensation results from their concurrent payment in full.

b. Petitioners contend (Pet. 19) that the court's concurrent award "is contrary to the uniform rule in four other judicial circuits." The cases on which petitioners rely, however, involve multiple injuries from a single accident or time of employment, and are based on the principle that a permanent total disability award presupposes a loss of all earning capacity, subsuming any lesser earning-capacity losses from the same incident or time of employment. *Rupert* v. *Todd Shipyards Corp.*, 239 F.2d 273, 276-277 (9th Cir. 1956) (claimant cannot obtain scheduled permanent partial disability award for facial disfigurement resulting from the same accident as other injuries which totally and permanently disabled him; total disability award "presupposes a permanent loss of all earning capacity"); *Korineck* v. *General Dynamics Corp.*, 835 F.2d 42, 43-44 (2d Cir. 1987) (claimant who received permanent total disability award for back injury cannot also obtain scheduled permanent partial disability award for hearing loss that, although unrelated to the back injury, arose out of the same employment period; total disability award "serves as full replacement for lost earning capacity"); *ITO Corp.* v. *Green*, 185 F.3d 239, 242-243 (4th Cir. 1999) (combined amount of permanent partial disability awards for injury to ankle and to shoulder incurred in the same accident cannot exceed the compensation employee would receive on a permanent total disability claim; "[t]o hold otherwise would be to conclude that the whole may be less than the sum of its parts"). The court below correctly distinguished those cases as ones in

which the permanent partial disability awards improperly "compensate[d] an employee for a loss of earning capacity that is accounted for in another award." Pet. App. 13 (distinguishing *Rupert*, *Korineck*, and *ITO Corp.*). In contrast, in this case, respondent first suffered a permanent partial disability and then suffered a permanent total disability, and each injury caused a distinct loss of wage-earning capacity.

c. Petitioners also cite *Bunol* v. *George Engine Co.*, 996 F.2d 67 (5th Cir. 1993), as conflicting with the decision below. See Pet. 20. But *Bunol* merely stated that "a party cannot receive temporary total benefits and permanent partial benefits at the same time." 996 F.2d at 69. That statement has no bearing on the question presented here—whether a claimant can receive compensation for successive injuries that cause distinct losses in earning capacity.

Contrary to petitioners' contention (Pet. 21-22), the decision below is also fully consistent with the D.C. Circuit's decision in *Crum* v. *General Adjustment Bureau*, 738 F.2d 474 (1984). In that case, the court of appeals rejected the employer's argument that awarding claimant a permanent total disability award after he received a permanent partial disability award "would result in compensation for more than 100 percent." *Id.* at 478. The court's statement, *id.* at 480, that the total disability award should be adjusted to take account of the prior award merely meant, as the court below recognized (Pet. App. 19), that a concurrent total disability award should compensate only for the loss of claimant's residual wage-earning capacity. Any such adjustment is unnecessary in this case because respondent's permanent total disability award is based solely on the

residual earning capacity that he retained after his 1979 injury.

3. Finally, petitioner contends (Pet. 23-25) that the court of appeals erred in holding that the maximum compensation limit set forth in 33 U.S.C. 906(b) applies to each of claimant's concurrent awards individually, not to their combined totals. That contention is also without merit and does not warrant review.

a. Section 906(b)(1) limits the weekly amount of "[c]ompensation for disability" that an injured worker may receive equal to 200% of the national average weekly wage. 33 U.S.C. 906(b)(1). That limit applies to each award individually, not to the total compensation payable under both. As the court explained, the same phrase—"compensation for disability"—is used elsewhere in the statute to refer to compensation for a single claim. Pet. App. 22-23; see 33 U.S.C. 908(a)-(c), 919(f). Moreover, the term "[d]isability" is defined as "incapacity because of injury to earn the wages which the employee was receiving at *the time of injury*." 33 U.S.C. 902(10) (emphasis added). That definition focuses on the loss of wage-earning capacity created by a particular injury and supports the conclusion that Section 906(b)(1) applies to compensation liability created by a particular disability and injury, and not to all compensation liability emanating from all injuries.

In addition, as the court of appeals noted (Pet. App. 23-24), the House Report accompanying the 1972 Amendments to the Act stated that one purpose of adequate workmen's compensation is "to strengthen the employer's incentive to provide the fullest measure of on-the-job safety." H.R. Rep. No. 1441, 92d Cong., 2d Sess. 1 (1972). The court was therefore appropriately reluctant to adopt an interpretation of Section 906(b)(1)

that would undercut Congress's intent to provide an incentive to employers to ensure the safety of previously injured workers who are already receiving compensation equal to the Section 906(b)(1) limit.

Furthermore, the Director of the Office of Worker's Compensation has interpreted Section 906(b)(1) to apply to compensation created by a particular disability. See *Carpenter* v. *California United Terminals*, No. 03-0213, 2003 WL 22866804, at *5 (DOL Ben. Rev. Bd. Nov. 25, 2003). The Director's interpretations of the LHWCA are entitled to weight. *Rambo*, 521 U.S. at 136.

Decisions interpreting a limitation-on-recovery provision formerly in the Act further support that interpretation. Under 33 U.S.C. 914(m), in effect between 1927 and 1972, "[t]he total compensation payable under [the] Act for injury or death shall in no event exceed the sum of $7,500 [later increased to $24,000]." Act. of Mar. 4, 1927, ch. 509, § 14, 44 Stat. 1434. Courts interpreted that provision to apply to the compensation payable for each claim, not to the combined benefits payable for multiple claims. *Pillsbury* v. *Liberty Mut. Ins. Co.*, 182 F.2d 743, 745 (9th Cir. 1950); *International Mercantile Marine Co.* v. *Lowe*, 93 F.2d 663, 665-666 (2d Cir.), cert. denied, 304 U.S. 565 (1938).

Finally, the court of appeals' holding that Section 906(b) applies separately to each award does not conflict with the view of any other circuit. The D.C. Circuit is the only other court to address the issue, and it has stated that Section 906(b)(1) operates to restrict each award individually, not the combined awards in the aggregate. *Hastings*, 628 F.2d at 91. Review of that issue is therefore unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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